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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 JONATHAN BERALL, M.D., M.P.H.,

9 Plaintiff,

10 v.

11 VERATHON INC., et al.,

12 Defendants.

CASE NO. C21-944 RSM

ORDER DENYING MOTION TO AMEND
CASE SCHEDULE

13
14 This matter is before the Court on Defendant Verathon Inc.'s Motion to Amend Case
15 Schedule. Dkt. #357. Defendant seeks to modify the case schedule, set approximately four
16 months ago, because of a possible conflict with the scheduled November 21, 2022 trial date. *Id.*
17 Plaintiff opposes the request. Dkt. #359. Finding that Defendant has not established good cause
18 at this time, the Court denies the motion.

19 Plaintiff filed this case in the Southern District of New York in 2010. Dkt. #1. After the
20 case was transferred to this Court, on July 15, 2021, the Court held a scheduling conference to
21 resolve scheduling disputes between the parties. Dkt. #349. A principal dispute between the
22 parties was whether the case could proceed on a more condensed schedule than would be typical
23 under the Court's Local Patent Rules. Dkt. #348. On September 21, 2021, the Court set a
24 schedule in line with that set forth in the Court's Local Patent Rules. Dkt. #352.

1 After the Court set the case schedule, Defendant's local counsel, Patricia A. Eakes,
2 learned of a potential conflict with the trial date previously set by the Court. Ms. Eakes is serving
3 as a Special Assistant Attorney General and prosecuting "three Tacoma, Washington police
4 officers accused of murder and manslaughter in the death of Manuel Ellis" in March 2020. Dkt.
5 #358 at ¶¶ 3–4. An October 3, 2022 trial date was recently set in one of those cases and the three
6 cases are likely to be tried together. *Id.* at 8. If those matters proceed as initially set, Ms. Eakes
7 anticipates that trial will extend into December 2022. *Id.* at ¶ 5. As further justification for its
8 request, Defendant asserts that the Court's resolution of the *Markman* hearing may, effectively,
9 be dispositive and seeks to set fact and expert discovery, dispositive motion, and settlement
10 deadlines off the Court's *Markman* ruling. Dkt. #357.

11 The Court may alter a scheduling order "only for good cause." FED. R. CIV. P. 16. "Rule
12 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking amendment.
13 The district court may modify the pretrial schedule 'if it cannot reasonably be met despite the
14 diligence of the party seeking the extension.'" *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
15 604, 609 (9th Cir. 1992) (citing FED. R. CIV. P. 16 Advisory Committee's Notes (1983
16 Amendment)). The Court's local rules similarly note the need for parties to proceed with
17 diligence. *See* LOCAL RULES W.D. WASH. LCR 16(b)(6) ("The parties are bound by the dates
18 specified in the scheduling order. A schedule may be modified only for good cause and with the
19 judge's consent. Mere failure to complete discovery within the time allowed does not constitute
20 good cause for an extension or continuance.").

21 Here, the Court does not find good cause to alter the recently set case schedule. As to the
22 first justification, the potential for a conflict with the trial date, the Court finds the issue currently
23 speculative. While trial dates have been set, they are nearly a year away and the scheduling
24 conflict may resolve if either of the case schedules needs further amendment in the intervening

1 year. Should a conflict remain nearer to the scheduled trial date, the Court will of course consider necessary alterations to the case schedule.¹

3 Second, and as to the efficiencies that may be realized by setting post-*Markman* deadlines
4 off a *Markman* ruling, the Court finds that the issue should have been raised at the initial
5 scheduling conference. While the parties' joint status report set forth a schedule reflecting post-
6 *Markman* deadlines scheduled off a *Markman* ruling, no party raised the issue at the Court's
7 scheduling conference and the Court set a schedule consistent with its regular practice. The
8 purported efficiency to be gained from the now requested schedule was evident on the day the
9 Court's scheduling order was issued and Defendant has not been diligent in raising the issue.
10 Further, and to the extent such efficiencies exist for both parties, the Court will consider
11 alterations that are agreeable to both parties.

12 Accordingly, having reviewed the motion, the arguments of the parties, and the remainder
13 of the record, and for the reasons stated herein, the Court finds and ORDERS that Defendant's
14 Motion to Amend Case Schedule (Dkt. #357) is DENIED.

15 DATED this 28th day of January, 2022.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

¹ Notably, Plaintiff indicates he will not object to a continuance, closer to the trial date, "if it becomes apparent that this matter's trial will actually conflict with proceedings in Ms. Eakes' criminal case." Dkt. #359 at 4.